Walter Bunbury Esq; and Dame *Elizabeth Irwin* his Wife } Appellants.

Dr. *John Bolton*, Alderman *Thomas Bolton* his Brother, *Charles Bladen* and *Lettice* his Wife. } Respondents

The Appellant's Case.

THAT *Dudley Loftus*, Doctor of Laws, being seized in Fee of one Brick House wherein he lived, with the Court, Stable, and Garden thereto adjoining, situate on the *Blind-key* in the City of *Dublin*, and of several other Houses in the said City of 170 *l. per annum*, in the Year 1679. mortgaged the same to the Governors of the *Blew-Boys* Hospital *Dublin*, for the Sum of 800 *l.* with Interest.

AND by his Will, dated *April* 5, 1695, among other things devised to the Appellant Dame *Elizabeth* his then Wife, the said Brick House, with the Court, Garden and Stable adjoining thereto, and one third part of the Profits of all his other Houses in the City of *Dublin* during her Life, (reserving the Use of a Room in the said House to each of his two Daughters,) together with the Furniture in his said Dwelling-house, and one third part of all other his Personal Estate; and the other two thirds of his Real and Personal Estate he devised to the Appellant *Elizabeth*, and the Respondent Dr. *Bolton*, in trust for his two Daughters the Respondent *Lettice* and *Jane* (since deceased,) exclusive of their Husbands, and on the Appellant Dame *Elizabeth*'s Marriage directed her Trust to cease, and the whole Trust for his said Daughters to be in the Respondent Dr. *Bolton*, and his Heirs, and by the said Will appointed the Appellant Dame *Elizabeth*, and the said Dr. *Bolton* his Executors, and soon after died.

THAT the Appellant Dame *Elizabeth*, and the said Dr. *Bolton* proved the said Will in the Prerogative Court of *Ireland*; but the said Dr. *Bolton* took on him the Execution thereof, and enter'd into and possessed himself of all the Real Estate (except the Brick House wherein the Appellant lived;) and also all the Personal Estate of great value, and particularly of a Library of Books, which he sold for 500 *l.* and disposed of the same at his Pleasure, without giving the Appellant any Account of the same.

THAT the Appellant in 1696 intermarry'd with *Robert Mc Neale* Esq; and the said *Mc Neale*, and the Appellant Dame *Elizabeth*, did by Indenture of Lease, dated the 20th of *January* 1696, demise the said Brick House, Court, Garden and Stable, wherein the said Appellant then lived, unto *Thomas Milburne* for 21 Years, from the 25th of *March* 1697, at 55 *l. per annum* (if the Appellant Dame *Elizabeth* so long lived) who held other part of the Premisses at 5 *l. per annum*, and some time after the said *Mc Neale* and the Appellant came over into *England*, and resided here until *Mc Neale*'s Death, which happen'd in 1708.

THAT the Respondent Dr. *Bolton* being in possession of the Real Estate, did in the Absence of the Appellant Dame *Elizabeth*, in or about the Year 1698, with the Consent of the said Daughters, by several Indentures of Lease, demise the said Estate, or great part thereof, unto several Tenants for long Terms of Years, at and under certain yearly Rents, without the Appellant Dame *Elizabeth*'s Privity or Consent.

THAT the said Respondents Dr. *Bolton*, *Charles Bladen* and *Lettice* his Wife, *Jane Loftus* (since deceased,) or some of them being thus in Possession of the Real Estate, received part of the Rents and Profits, and by Deeds of Lease and Release bearing date the 26th and 27th of *January* 1704, Released and Confirmed unto the other Respondent *Thomas Bolton* Brother to the Doctor, and his Heirs, all their Right and Interest in the said Dr. *Loftus*'s Real Estate, in consideration of 2100 *l.* paid or secured by him, that is to say, 900 *l.* thereof paid the said two Daughters, 900 *l.* retained in his hands, alledged to be then due to the Governors of the said Hospital on the said Mortgage, and the remaining 300 *l.* he retained in his hands

hands for the Appellant Dame *Elizabeth*, in full Satisfaction of her Demands on the ſaid Eſtate.

Reſpondent *Thomas* purchaſed *Milburne*'s Leaſe.

That the Appellant being in this Kingdom, and the Reſpondent *Thomas* having purchaſed as aforeſaid, the Right and Intereſt of the ſaid Daughters, did purchaſe from or procure to be aſſigned to him the remainder of the ſaid Term of 21 Years unexpired, of the ſaid *Milburne*'s Leaſe, of the Appellant Dame *Elizabeth*'s Dwelling-houſe; and the Reſpondent *Thomas Bolton* demiſed back to the ſaid *Milburne*, part of the Premiſſes at the Rent of 42 *l. per annum* for 71 Years, from *Michaelmas* 1705, and *Milburne* ſoon after ſold the ſaid Term of 71 Years for 100 *l.*

1705. Reſpondent *Thomas* deviſed back to him of part for 42 *l.* per ann. for 71 Years.

THAT Reſpondent *Thomas Bolton* being by virtue of the ſaid Aſſignment of *Milburne*'s Leaſe, and the Conveyance from the Reſpondent Dr. *Bolton*, and *Bladen*, and his Wife, in poſſeſſion of the Premiſſes, and Reſpondent *Thomas* being alſo one of the Governors of the ſaid Hoſpital and Treaſurer thereof, the 10th of *May* 1706. came or pretended to come to an account with the other Governors on the ſaid Mortgage, and in conſideration of 805 *l.* 15 *s.* 2 *d.* pretended to be then due to them, obtained an Aſſignment of the ſaid Mortgage unto *Richard Wilding*, in Truſt for him the Reſpondent *Thomas*, and the ſaid Reſpondent afterwards built on part of the Premiſſes himſelf; let other part for long Terms of Years, ſome for Lives renewable, and ſome made Fee-Farms, and took large Fines, letting the ſame at Under-Rents to ſeveral Tenants who pulled down the Houſe, ſo particularly deviſed to the Appellant Dame *Elizabeth*, and built ſeveral new Houſes on the Ground where the ſame ſtood, and ſold the Materials of the old Houſe, and alſo the ſeveral other Houſes, and with the Money ariſing and Materials of the other Houſes on Appellants Thirds have erected new Houſes, without rendring any account to your Appellant Dame *Elizabeth*; and the Reſpondents, or ſome of them, have ſince the ſaid Doctor's Death received the Rents and Profits of the Premiſſes.

Reſpondent *Thomas*'s purchaſe of the Mortgage 18th May, 1706.

Reſpondent *Thomas* Let Leaſes in 1706.

Dame *Elizabeth* Appellant's Bill filed 11th Nov. 1710.

THAT the Appellant Dame *Elizabeth*, during her continuance in this Kingdom, in the Life-time of the ſaid Mr. *Mc. Neale*, and after his Death writ ſeveral Letters to the Reſpondent *Thomas*, and Dr. *Bolton* for the Rent of the ſaid Dwelling-Houſe, and for the third Part of the reſt of the Real Eſtate, and for an Account of the Perſonal Eſtate; who having refuſed the ſame, The Appellant 11th of *November*, 1710. with *William Broughton* Eſq; her then Husband, exhibited their Bill of Complaint againſt the Reſpondents in the Court of *Chancery* in *Ireland*, ſetting forth the Facts herein before ſtated, and to have the Poſſeſſion of the Houſes built on the Ground, where the Appellants Houſe ſtood, and for an Account of the Profits thereof, and of the one third Part of the reſt of the Real Eſtate ſince Dr. *Loftus*'s Death, which happened in the Year 1695.

Reſpondent's Anſwer 17th April, 1711.

THAT the Reſpondents anſwered the ſaid Bill and the Cauſe was at Iſſue, and Witneſſes were examined on both Sides; but before the ſame was heard, the ſaid *William Broughton* dy'd, and the Appellant Dame *Elizabeth* on the 29th of *September*, 1715. obtained an Order to proceed in the Cauſe in her own Name, and the Cauſe was heard in the ſame Court, the 21ſt Day of *November*, 1716. before the Lord High Chancellor of *Ireland*, who Ordered and Decreed, That the Appellant Dame *Elizabeth* ſhould have and recover from the Reſpondent *Thomas Bolton*, the Houſe called, the *One Tun*, with Court, Garden, Stable and Appurtenances thereunto belonging, as Deviſed by the Will of the ſaid Dr. *Loftus*, and that the ſaid Houſe and ſo much of the Premiſſes as were ſet to the ſaid *Milburne*, be accounted for at 55 *l. per Annum* during *Milburne*'s Leaſe, and after the expiration thereof, that the Appellant Dame *Elizabeth*, during her Natural Life, ſhould have the Rents thereof, as then ſet by the Reſpondent *Thomas Bolton*, and a third Part of the reſt of the Real Eſtate alſo during her Life, as the ſame were then ſet by the ſaid Reſpondent *Thomas*, ſubject to a fifth Part of the Mortgage aſſigned to him or his Truſtee, by the *Blew-Coat Hoſpital*. And it was further Decreed, that the ſaid Appellant Dame *Elizabeth*, ſhould have and recover againſt the other Reſpondent Dr. *Bolton*, one third Part of the Perſonal Eſtate, and an Account thereof directed to be taken as alſo of the Produce of the Real Eſtate, from the Death of the ſaid Dr. *Loftus*. And that the Fines received ſhould go towards diſcharging of the ſaid Incumbrances: But the ſaid Decree ſhould not effect the Leaſes made by the Reſpondent *Thomas Bolton*, to the Tenants of the Premiſſes. And the Reſpondent *Thomas* was to have an Allowance for the ſaid two Rooms deviſed to the ſaid two Daughters of the ſaid Dr. *Loftus*, according to his Will, in Caſe they had not Satisfaction for them. And it was referred to one of the Maſters, to ſtate and ſettle the ſaid Accounts.

Decree 21ſt Nov. 1716.

THAT

THAT the Appellants ſince the pronouncing the ſaid Decree intermarried, and they humbly conceive they are Aggreived by the Decree, and that the ſame ought to be Altered and Amended in the Particulars, and for the following

REASONS.

I. FOR that the ſaid Decree directs, that the ſaid Houſe and ſo much of the Premiſſes as were ſet to *Milburne*, ſhould be accounted for at 55 *l. per Annum*, during *Milburne*'s Leaſe: Whereas the ſaid *Milburne* paying 55 *l. per Annum*, for one Part of what was Let to him, and 5 *l. per Annum* for other Part thereof, as appears by the Proofs in the ſaid Cauſe, what was Let to him ought to be accounted for at the rate of 60 *l. per Annum* during the time of *Milburne*'s Leaſe.

II. FOR that after the ſaid *Milburne*'s Leaſe, the Appellant Dame *Elizabeth* is Decreed to have during her Life only the Rent, as now Let by the Reſpondent *Thomas Bolton*: Whereas the ſaid Reſpondent *Thomas*, purchaſing the Reverſion from the two Daughters, and afterwards taking in the ſaid Mortgage with full notice of the Appellant Dame *Elizabeth*'s Eſtate for Life, and ſo becoming voluntarily concerned he ought not to put the Appellant in a worſe Condition than ſhe would have been had he not been ſo concerned. And therefore the Appellant Dame *Elizabeth* ought to be concluded for her Life, Intereſt at an under Rent reſerved on Fines taken by the Reſpondent *Thomas*, but ought to have the Poſſeſſion of the Houſe and Garden particularly deviſed to her, with all the Improvements thereon, or an Equivalent for the ſame according to the improved Rents thereof, and likewiſe for the Materials of the Old Houſes.

III. FOR that as to the third Part of the reſt of the Real Eſtate deviſed to the Appellant, ſhe is Decreed only to the third Part of the Rents now received, though great Fines have been taken on the making the Leaſes, which ought not to be for the Reaſons before mentioned; and for that the Reverſion is thereby unduly eaſed and Improved at her Charge.

IV. FOR that the Fines are Decreed to be applied to the Mortgage which are chiefly taken out of the Appellant *Elizabeth*'s Eſtate for Life, and no Recompence is Decreed her and ſhe ought to bear but a proportion thereof, ſo that the Appellants are unequally charged in caſe of the Reverſion, in regard when that Debt is paid, the Appellant Dame *Elizabeth* is, during the remainder of her Life, to have only the Rents reſerved where ſuch Fines have been taken.

V. FOR that there is not any Directions given by the ſaid Decree, that the Appellant *Elizabeth* ſhould have Intereſt for the Money coming to her from the Reſpondent *Thomas Bolton*, whilſt the ſame lay in his Hands, nor is the Conſideration of Intereſt reſerved.

VI. FOR that the Reſpondents are not Decreed to produce before the Maſter on Oath, all Deeds, Writings and Accounts in their Cuſtody or Power, which ought to have been Decreed, and without which the Account cannot be fairly taken and adjuſted.

VII. FOR that the Reſpondents ought to have been Decreed to be examined on Interrogatories, to diſcover what was *bonâ fide* paid on the ſaid Mortgage; as alſo for clearing the Accounts and other Matters in Queſtion as there ſhould be Occaſion; and the rather for that the Mortgagees were in Receipt of the Rents and Profits of the mortgaged Premiſſes for about ten Years before the Aſſignment thereof to the Reſpondent *Thomas Bolton*, whereby the ſaid Mortgage was very near (if not fully) paid and ſatisfied, and the Coſts ought to have been Decreed to the Appellant Dame *Elizabeth*.

VIII. FOR that the Perſonal Eſtate of the ſaid Dr. *Loftus*, ought to have been in the firſt Place applied towards the Payment of the ſaid Mortgage; and what the Appellant has paid towards the diſcharge of the ſaid Mortgage ought to be reimburſed her thereout, or out of the Co-heirs two thirds.

FOR which Reaſons the Appellants humbly hope, the ſaid Decree will be Altered and Amended in the Particulars before mentioned.

ROBERT RAYMOND.
SPENCER COWPER.

WALTER BUNBURY Esq; *and Dame* ELIZABETH *his Wife*, } Appellants.

Dr. JOHN BOLTON, *Alderman* THOMAS BOLTON *his Brother*, CHARLES BLADEN *and* LETTICE *his Wife*, } Respondents.

THE APPELLANTS CASE.

To be heard the 24th Day of *November*, 1721.